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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Review of the Commission's Rules)	MM Docket No. 00-39
and Policies Affecting the Conversion)	
to Digital Television)	

To: The Commission

**OPPOSITION TO PETITION FOR
RECONSIDERATION AND CLARIFICATION**

Barry Telecommunications, Inc. (Barry), through its attorneys and pursuant to Sections 1.4 and 1.429(f) of the rules, hereby files its Opposition to the Petition for Reconsideration and Clarification (Petition) filed March 15, 2001 by Paxson Communications Corporation (Paxson) in connection with the Report and Order in the above-referenced proceeding. In support thereof, the following is shown:

1. Barry is the licensee of public Station WXEL-TV, West Palm Beach, Florida. Barry has pending a construction permit application for WXEL-DT (FCC File No. BPEDT-20000403AAT) which, if granted, would substantially expand the WXEL-DT service area to include almost 500,000 additional viewers. This application is in conflict with an application filed by Paxson for WPXM-DT, Miami, Florida (FCC File No. BPCDT-19991020ACC).¹ Barry submits that its proposal is no less worthy of consideration in the public interest than that of Paxson.

¹ In a letter filed January 12, 2001 opposing Paxson's specific request for waiver to apply first-come, first-served processing to the WPXM application, Barry has addressed in detail the merits of Paxson's waiver request as it concerns the conflicting proposals of Paxson and Barry.

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2. Paxson's Petition requests among other things that the Commission should reconsider its decision not to apply first-come, first-served processing procedures to all DTV applications whether they were filed before or after January 18, 2001 (Petition, p. 3). Paxson's sole justifications for this extraordinary request are the alleged unfairness of the current scheme to DTV applicants like Paxson, which were not informed that their filings would not be protected until after January 18, 2001, and the alleged departure from past Commission practices in adopting this processing scheme (Petition, pp. 2-5). These claims in no way support the wholesale evisceration of the FCC's DTV application processing scheme sought by Paxson.

3. Contrary to Paxson's claim, the equities entirely favor processing of the hundreds of DTV applications, including maximization proposals, which were timely filed in reliance on the FCC's announced processing system. That system included publication of deadlines for the filing of DTV applications that would be considered on an equal footing with prior filings. Like Paxson, these applicants have invested substantial resources in their proposals, and Paxson's proposals are no more entitled to priority consideration than these later-filed applications. While Paxson suggests (Petition, pp.3-4) that long-pending applications have some proprietary interest in proposals to modify their protected service areas, the fact is that the FCC never provided any applicant assurance of protection beyond that provided in its DTV allotment decisions. Any applicant trying to alter its protected area via a "non-checklist" application, whenever filed, has always been well aware that it may not secure favorable FCC action and had

no particular claim to favorable action based on the timing of its application. This principle was effectively reiterated when the Commission issued its Notice of Proposed Rule Making in MM Docket No. 00-39, 15 FCC Rcd 5257 (2000), released over a year ago. Viewed against the backdrop of the myriad circumstances surrounding the massive effort by the TV industry to implement DTV, entailing numerous licensee requests for facilities and channel modifications to change their allotted operating parameters, Paxson's request for first-in-time processing, contrary to Paxson's assertion (Petition, p. 4), is neither fair nor objective; in fact, it is arbitrary and contrary to the public interest.

4. Paxson's claim that the DTV processing procedures conflict with the Commission's "customary" processing procedures (Petition, p. 3) is wholly without merit. In this regard, the FCC's new system for processing various AM, FM and FM translator minor modification applications (Petition, p. 3, fn. 3) is of recent vintage. Perhaps more important, the FCC over the years has adopted a variety of processing schemes in particular services deemed appropriate for those services, including lotteries, cutoff lists, filing windows and auctions. Under the circumstances, the FCC's approach to processing DTV applications, which balances the needs of the licensees, the public and the Commission's interest in orderly administration of spectrum, in no way diverges from "customary" practices.


5. Finally, Paxson's conclusory, petulant and self-serving claim (Petition, pp. 4-5), that applicants "that made no effort to protect" earlier-filed applications are

behaving improperly by making "unreasonable, and often monetary, demands", should be summarily dismissed. Applicants had no obligation to protect earlier-filed DTV applications seeking protection beyond that awarded them by the FCC. Further, there is no assurance at all that earlier-filed applications will provide greater benefits to the public than subsequent conflicting proposals. Finally, as the Commission correctly observed, "[i]t is unlikely that any of the parties with pending DTV applications filed such applications with the intent of extracting a settlement from another party or holding up the processing of the other party's DTV application." Report and Order at para. 48. Under the circumstances, Paxson has no right or cause to level charges implying impropriety on the part of licensees seeking improvement of their DTV facilities which happen to conflict with Paxson's own proposals.

WHEREFORE, for the foregoing reasons, Barry respectfully urges the Commission to deny Paxson's request for reconsideration to the extent that it requests adoption of first-come, first-served cutoff procedures to all DTV applications.

Respectfully submitted,

BARRY TELECOMMUNICATIONS, INC.

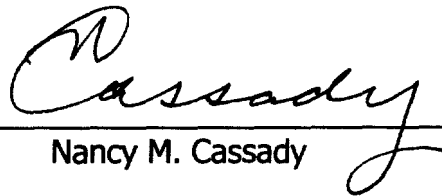
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CERTIFICATE OF SERVICE

I, Nancy M. Cassady, Secretary in the law offices of Schwartz, Woods & Miller, do hereby certify that I have on this 12th day of April, 2001, sent by First Class United States mail, postage prepaid, copies of the foregoing **OPPOSITION TO PETITION FOR RECONSIDERATION AND CLARIFICATION** to

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Nancy M. Cassady